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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,522	10/06/2003	George M. O'Brien	20717-0001	2521
29052	7590	10/01/2004	EXAMINER	
SUTHERLAND ASBILL & BRENNAN LLP 999 PEACHTREE STREET, N.E. ATLANTA, GA 30309			GORDON, STEPHEN T	
			ART UNIT	PAPER NUMBER
			3612	

DATE MAILED: 10/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/605,522

Applicant(s)

O'BRIEN, GEORGE M.

Examiner

Stephen Gordon

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 October 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2-9-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. Applicant's election with traverse of group I in the reply filed on 8-11-04 is acknowledged. The traversal is on the ground(s) that at least with regard to the define groups I and II, the devices do not have separate utility. This is not found persuasive because in the evidence claim for the device of group II, a dump bed is recited on a vehicle. In the evidence claim for group I, does not define a dumping type bed. Moreover, the referenced static/non-dump body does not refer to the movable arms per se but rather the dump body itself.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 19-25 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention. Applicant timely traversed the restriction (election) requirement in the reply filed on 8-11-04.
3. It is requested that applicant cancel the non-elected claims 19-25 in response to this action to facilitate the issue process if the application is ultimately allowed.
4. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because the filed copies of pictures are objected to as being somewhat unclear and comprise informal drawings not suitable for printing (i.e. rough hand drawn reference numbers etc.). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

5. The disclosure is objected to because of the following informalities: in paragraph 25 – last line, “156” should be –155–.

Appropriate correction is required.

6. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 1, line 9 is somewhat confusing, and “a protrusion” could be replaced with –a respective one of said protrusions—to clarify the claim in this regard as best understood.

Re claim 10, line 3 is somewhat confusing, and “said protrusion” could be replaced with –said respective protrusion—to clarify the claim in this regard as best understood.

Re claim 11, line 3 is somewhat confusing, and “said chain” could be replaced with –a respective one of said chains—to clarify the claim in this regard as best understood.

Re claim 12, “said mounting block” in line 1 lacks clear antecedent basis, and the term could be written as –each said mounting block—for clarity as best understood.

Re claim 13, “said base plate” lacks clear antecedent basis.

Re claim 14, “said protrusion” in line 1 lacks clear antecedent basis, and the term could be written as –each said protrusion—for clarity as best understood.

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Re claim 15, "said protrusion" in line 2 lacks clear antecedent basis, and the term could be written as —each said protrusion—for clarity as best understood.

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1-6 and 9-18, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's admitted prior art of figures 1 and 2 of the instant specification (hereinafter referred to as "O'Brien") in view of Hughes.

O'Brien teaches a tailgate 40, mounting blocks 70 which define protrusions as broadly claimed, arms 60 rotatable on the protrusions, and a flexible cable 90 attaching the tailgate arms to the vehicle chassis to limit rotation.

O'Brien fails to teach that the cable components can be a chains.

Hughes teaches use of a chains 32 between a dump truck and tailgate to limit rotation of the tailgate.

In order to provide a more durable connection, it would have been obvious to one of ordinary skill in the art to replace the cables of O'Brien with chains in view of the teachings of Hughes.

Re claims 3 and 4, the gate of O'Brien defines a plate as broadly claimed.

Re claims 5 and 6, at least the side attachment elements visible in the instant figure 1 define reinforcing members as broadly claimed.

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Re claim 9, the arms are substantially rectangular as broadly claimed.

Re claim 12, O'Brien teaches bolting of the mounting blocks and fails to specifically teach that the blocks could alternatively be welded. Welding per se is a notoriously well known attachment method in the art and is known to have the advantage over bolts in providing permanent attachment – e.g. bolts can work loose under vibration loads over time etc. In order to provide for advantages associated with permanent attachment, it would have been obvious to one of ordinary skill in the art to replace the mounting block bolt attachment with a weld attachment in view of known art practices.

Re claims 13-17, the device is configured as broadly claimed.

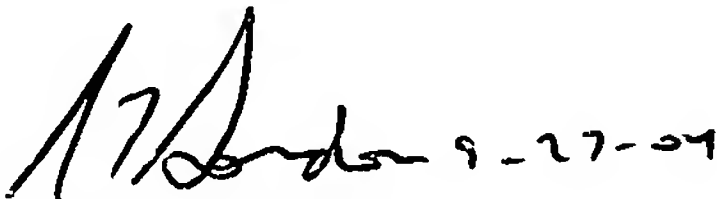
9. Claims 7 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note at least Hagenbuch '235 teaches an upwardly swinging dump body tailgate structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gordon whose telephone number is (703) 308-2556. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen Gordon
Primary Examiner
Art Unit 3612

stg